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ALEXANDER L. STEVAS,
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No. 81-38
IN THE SUPREME COURT
OR THE UNITED STATES

MARY ELLEN CRAWFORD, et al.,
Petitioner,
vs.
THE BOARD OF EDUCATION OF THE CITY OF LOS ANGELES,
Respondent.

BRIEF ON BEHALF OF THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA

Amicus Curiae

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Questions Presented for Review

Of the questions presented for review, the League of Women Voters of California elects to brief only one:

Whether a ballot initiative known as Proposition I, which explicitly classifies school desegregation matters adversely and differently from other racial matters and from other educational matters, is inconsistent with Hunter v. Erickson, 393 U.S. 385 (1969) and thus is unconstitutional under the equal protection clause of the Fourteenth Amendment.

INTRODUCTION

The League of Women Voters of California, with 12,000 members, has long been a supporter of school desegregation. The League was a signator of the ballot argument against Proposition I. It took an active and visible role in the campaign against the proposition. It has also participated as amicus curiae in litigation challenging the constitutionality of Proposition I.

ARGUMENT

I

PROPOSITION I IS INCONSISTENT WITH HUNTER v ERICKSON, 393 U.S. 385 (1969) AND IS EITHER UNCONSTITUTIONAL UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OR OF NO EFFECT.

In Hunter v. Erickson (1969) 393 U.S. 385,89 S. CT. 557, the City of Akron passed a charter amendment requiring that any ordinance regulating the use, sale, etc. of real property on the basis of race, color, religion, national origin or ancestry must first be approved by a majority of the electors. This court held that the charter amendment 'drew a distinction between those

groups who sought the law's protection against racial, religious, or ancestral discrimination in the sale and rental of real estate and those who sought to regulate real property transactions in the pursuit of other ends' and also 'that the law's impact falls on the minority.' Therefore, it 'discriminates against minorities, and constitutes a real, substantial, and invidious denial of the equal protection of the laws.' Hunter v. Erickson, supra, 89 S.CT. 560,562.

Proposition I seeks to draw a distinction between those students who attend schools segregated by state action and those attending schools segregated by other causes, a distinction which is contrary to California law. The law's impact falls solely on minority students. Therefore, if Proposition I is so construed as to

carry out its purpose, it constitutes a real, substantial, and invidious denial of the equal protection clause of the Fourteenth Amendment.

Stated in other terms, Proposition I is unconstitutional if it prevents California courts from ordering the desegregation of California schools by all reasonably feasible means, regardless of the cause of the segregation.

A. In school desegregation cases the touchstone by which state action must be measured is the federal Equal Protection Clause, which states:

> '(A state may not) deny any person within its jurisdiction the equal protection of the laws.'

B. The laws of the State of California regarding school desegregation are clear:

1. Education is a fundamental right under California law. Serrano v. Priest (1971) 5 Cal. 3d 584, 604-610 [96 Cal.Rptr. 601]; Serrano v. Priest (1976) 18 Cal. 3d 728, 765 [135 Cal. Rptr. 345]; Crawford v. Board of Education (1976) 17 Cal. 3d 280, 297 [130 Cal. Rptr. 724]; Tinsley v.Palo Alto Unified School District(1979) 91 Cal. App. 3d 871, 906 [154 Cal. Rptr. 591].

2. California local school boards and the state have, and have had since at least 1963, a duty to alleviate or eliminate segregation in schools, regardless of the cause of the segregation, by reasonably feasible means. Jackson v. Pasadena City School District(1963) 59 Cal. 2d 876 [31 Cal. Rptr. 606]; Crawford, supra, 17 Cal. 3d 280, 291, 292; Tinsley, supra, 91 Cal. App. 3d 904-907.

3. Local school boards in California are agents of the state. Crawford, supra 17 Cal. 3d 295; Tinsley, supra, 91 Cal. App.3d 881, 882.

4. Any action by the state which obstructs the removal of de facto school segregation transforms the setting into one of de jure segregation. San Francisco Unified School District v. Johnson (1971) 3 Cal. 3d 937, 959 [92 Cal. Rptr. 309,323]

5. The action of the electorate in adopting a proposition is state action. Hunter v. Erickson, supra, 89 S.Ct. 392.

C. Since the duty to desegregate schools is directed solely to protecting the right of minority students to a desegregated education, any failure to carry out that duty can only impact

against minority students. The League does not here overlook the benefit to white students of an integrated education, but recognizes that constitutional protection in this instance is accorded only to minority students.

D. The clear purpose of Proposition I, and the purpose for which respondant school district seeks to use it, is to prevent a California court from ordering the desegregation of California schools when the segregation is caused by other than state action. See the arguments in the ballot pamphlet by the proponents of Proposition I, the analysis of the Legislative Analyst, letters published by the state Attorney General and Secretary of State prior to the election, and articles published in the press prior to the election.

E. The key proviso in Proposition I reads:

> 'provided that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceeds those imposed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation.'

Granted that the purpose of this clause and related language in Proposition I is to prevent a California Court from ordering the desegregation of de facto segregated schools, we are faced with a logical impossibility. That is, if Proposition I is construed to permit the state to deny some minority students the equal protection of California laws, then California law will be applied in

a discriminatory way, and the proposition will violate the federal Equal Protection Clause. The only construction of Proposition I which does not violate the Fourteenth Amendment is that proposition I does not accomplish its intended purpose.

This dilemma is the one with which the state appellate court struggled. The court attempted to resolve the dilemma by holding that the duty to desegregate segregated schools, regardless of the cause of the segregation, still exists, but that the courts are now forbidden to use pupil school assignment or pupil transportation as remedies. Crawford, supra, 113 Cal. App. 3d 652, 653. This simply replaces one logical impossibility with another. If the duty to desegregate exists in California, then under both federal and

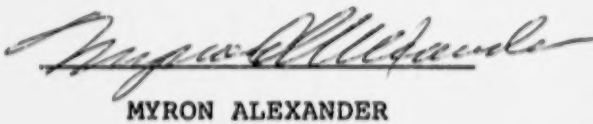
California law, the courts are entitled to use any of a broad panoply of remedies, including pupil school assignment and pupil transportation. Swann v. Charlotte-Mecklenburg Board of Education (1971) 402 U.S. 1, 91 S.Ct. 1267; Crawford (1976), supra, 17 Cal. 3d.308,309.

The appellate court's error appears to arise from the misapprehension that the federal duty is unrelated to the state duty. The federal duty is to carry out state laws without discrimination. If the state law itself is discriminatory on its face it violates the federal Equal Protection Clause. If the state law is not discriminatory on its face, it still may not be applied in a discriminatory way. The latter is our present situation. California law does not violate the Fourteenth Amendment.

It follows that California may not apply its law to deny some minority students a desegregated education. It would indeed be an anomaly if the Fourteenth Amendment could be used to transform a state-created duty from a non-discriminatory duty to a discriminatory duty.

In summary, either Proposition I has no effect on pre-existing California law, or it violates the federal equal Protection Clause.

RESPECTFULLY SUBMITTED:



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CERTIFICATE OF SERVICE
BY MAIL

NO. 81-38

JACK ROBERTSON certifies as follows:

He is an active member of the State Bar of California and not a party to the within action.

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which envelope was then sealed and postage fully prepaid thereon and thereafter was on December 16, 1981 deposited in the United States mail at Menlo Park, California.

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